

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

APPALACHIAN POWER COMPANY,

Plaintiff,

v.

CASE NO. 2:21-cv-00121

ARMSTRONG UTILITIES, INC.,

Defendant.

COMPLAINT

COMES NOW Appalachian Power Company (“APCo”) and says as follows for its Complaint against Armstrong Utilities, Inc. (“Armstrong”).

Introduction

This action arises from Armstrong’s failure to pay sums due to APCo under a Joint Use Agreement, which sets the terms, conditions and fees payable for Armstrong’s attachment of Cable TV cable and related facilities to APCo’s utility poles in this district. As shown by the Invoices attached as Exhibit A, Armstrong owes APCo, and is past due in paying, over \$191,000.

The Parties

1. APCo is, and was at all times relevant to this action, a corporation chartered in the Commonwealth of Virginia.

2. APCo's principal place of business is, and was at all times relevant to this action, in Columbus, Ohio.

3. Armstrong is, and was at all times relevant to this action, a corporation chartered in the Commonwealth of Pennsylvania.

4. Armstrong's principal place of business is, and was at all times relevant to this action, in Butler Pennsylvania.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a)(1) because it is an action between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because: a) a substantial part of the events or omissions giving rise to the claim occurred in this district; and b) a substantial part of the personal property that is the subject of this action is situated in this district.

Armstrong's Debt to APCo

7. As shown by that invoice dated July 10, 2020 (Invoice Number ending with 01128), Armstrong owes and is contractually obligated to pay APCo \$94,977.75 for advanced rental due for the period July 1, 2020 to June 30, 2021. *See* Exhibit 1.

8. As shown by that invoice dated December 18, 2019 (Invoice Number ending with 66179), Armstrong owes and is contractually obligated to pay APCo \$33,398.59 for Armstrong's share of the cost of the 2019 Whole Pole Attachment Inventory Audit. *See* Exhibit 2.

9. As shown by that invoice date February 24, 2020 (Invoice Number ending with 91258), Armstrong owes and is contractually obligated to pay APCo \$3,105 for pre-construction and post-construction inspections. *See* Exhibit 3,

10. As shown by that invoice dated March 10, 2020 (Invoice No. ending with 18861) 91258, Armstrong owes and is contractually obligated to pay APCo \$59,843.28, for unauthorized attachment to APCo's poles, as follows:

a. 2014	\$12,990.72
b. 2015	\$10,793.79
c. 2016	\$11,637.52
d. 2017	\$12,417.60
e. <u>2018</u>	<u>\$12,003.68</u>
f. TOTAL	\$59,843.28

11. APCo has made repeated demand upon Armstrong for payment as described above, but Armstrong has failed and refused to pay any part of the same.

12. Despite its ongoing lack of payment to APCo, Armstrong continues to use APCo's poles and to derive economic benefit therefrom.

WHEREFORE, Appalachian Power Company prays that it be granted judgment against Armstrong Utilities, Inc. in the amount of \$191,324.62, together with the cost, fees and expenses (including reasonable attorney's fees) incurred in the prosecution of this matter, and all such other or further relief as this Court deems proper and just.

APPALACHIAN POWER COMPANY
By Counsel,

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